

FEDERAL DEFENDANT
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

ROBERT C. CARTER II and BECKY L.
CARTER, husband and wife,

11-CV-6043-TC

Plaintiffs,

FINDINGS and RECOMMENDATION

v.

RECONSTRUCT COMPANY, N.A.; BAC
HOME LOANS SERVICING, L.P., a limited
partnership, aka Bank of America Home
Loans; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC., a
corporation

Defendants.

COFFIN, Magistrate Judge:

Pro se plaintiffs filed this action in Deschutes County Circuit Court and defendants removed it to this court based on the diversity of the parties. Although the complaint is unclear, it appears that plaintiffs obtained a loan on a property in Bend and later stopped making payments on the loan so they could get a loan modification and that they did so based on alleged verbal representations of Bank of America. Plaintiffs desire monetary damages on various state claims and a declaration that

the ultimate foreclosure on the property is invalid, that a deed recorded on the property is null and void, and that they are the fee simple owners of the property.

Defendants filed a motion to dismiss. After plaintiffs failed to respond to the motion, this court ordered plaintiffs to show cause why the action should not be dismissed and warned them that a failure to respond would result in the dismissal of the action for failure to prosecute. Plaintiffs responded with a request to amend to clarify their claims. This court recommended that the request be allowed by recommending that the motion to dismiss the complaint be granted without prejudice to plaintiffs to file an amended complaint. Plaintiffs were warned that a failure to amend within 20 days would result in the dismissal of the action for failure to prosecute. The recommendation was adopted by the District Court (#22).

Plaintiffs have failed to amend within 20 days. Accordingly, this action should be dismissed for failure to prosecute. The five factors for dismissal discussed in Malone v. United States Postal Service, 833 F.2d 128 (9th Cir. 1987) have been weighed and indicate that dismissal is proper.

CONCLUSION

As discussed above, this action should be dismissed for failure to prosecute.

DATED this 3 day of August, 2011.



THOMAS M. COFFIN
United States Magistrate Judge